

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

IN RE:

Case No. 08-69445

LITTLE ROCK BAPTIST CHARITY
CARE CENTER, INC.,

Chapter 11

Judge Thomas J. Tucker

Debtor.

_____ /

ORDER DENYING MOTION FOR RECONSIDERATION

This case comes before the Court on “Joseph M. Wright's Request for New Hearing Date for Debtor's Motion for Summary Judgment and Objection to Claim,” filed on the evening of May 21, 2009 (Docket # 142, the “Reconsideration Motion”), which this Court construes as a motion for reconsideration of, and for relief from, the Court’s “Order Granting Debtor's Motion for Summary Judgment and Sustaining Debtor’s Objection to the Claim of Interest of Joseph M. Wright” (Docket # 141), and

The Court having reviewed and considered the Reconsideration Motion, and

The Court finds the Reconsideration Motion fails to demonstrate a palpable defect by which the Court and the parties have been misled, and that a different disposition of the case must result from a correction thereof. *See* Local Rule 9024-1(a)(3).

Further, the Court finds that the allegations in the Reconsideration Motion do not establish excusable neglect under Fed.R.Civ.P. 60(b)(1), FedR.Bankr.P. 9024, or any other valid ground for relief from the order in question.

In addition, the Court notes the following. The motion seems to argue that neither Joseph Wright nor his attorney, Douglas K. MacLean, knew of the May 20, 2009, 2:00 p.m. hearing date on Debtor’s claim objection and on Debtor’s motion for summary judgment on the claim

objection. Or, at the very least, the motion implies, attorney MacLean did not know of this hearing date, and did not receive notice of it. These arguments are without merit, and in fact are frivolous. As the Court noted on the record during the May 20, 2009 hearing (which neither Joseph Wright nor his attorney attended,) both Joseph Wright and his attorney Mr. MacLean received ample notice, *and had actual knowledge*, of the May 20, 2009 hearing.

First, both Joseph Wright and his attorney Mr. MacLean were present at the April 8, 2009 hearing, and both actively participated in that hearing, and at the end of that hearing, the Court clearly stated that it would hold a further hearing on Debtor's objection to Mr. Wright's claim and on the Debtor's summary judgment motion on the claim objection, on May 20, 2009 at 2:00 p.m. (*See* Transcript of April 8, 2009 hearing, filed at Docket # 127, at 1 (list of appearances), 21 (division of the argument between Mr. Wright and Mr. MacLean), 21-39 (argument by Mr. Wright), 39-46 (argument by Mr. MacLean), 50 (Court sets hearing date for May 20, 2009 at 2:00 p.m.)

Second, at the end of the April 8, 2009 hearing, and in Mr. Wright's and Mr. MacLean's presence, the Court stated that it would do a scheduling order reflecting, among other things, the May 20 hearing date that the Court had just set. (*Id.* at 51). So both Mr. Wright and Mr. MacLean knew to look for a scheduling order. The Court did in fact enter that scheduling order, later the same day (April 8, 2009)(Docket # 112), and that Order clearly stated the May 20, 2009 hearing date and time, **in bold**. In pertinent part, the Order stated as follows:

3. The Court will hold further proceedings on the "Debtor's Objection to Claim of Joseph M. Wright" (Docket # 81, "Debtor's Claim Objection") as follows:
 - (a) If Joseph M. Wright files a timely response to the Debtor's Motion for Summary Judgment filed April

6, 2009 (Docket # 107), *i.e.*, a response filed no later than April 24, 2009, Debtor must file a reply brief in support of the summary judgment motion no later than May 1, 2009.

- (b) If Joseph M. Wright files a timely response to Debtor's summary judgment motion, the Court will hold a hearing on that motion on **May 20, 2009 at 2:00 p.m.**
- (c) The Court will hold a further hearing on Debtor's Claim Objection on **May 20, 2009 at 2:00 pm.**

(bold emphasis in original).

Given these facts, it is absolutely clear that both Mr. Wright and Mr. MacLean *actually knew*, and had ample and clear notice, beginning on the afternoon of April 8, 2009, of the hearing scheduled for May 20, 2009 at 2:00 p.m.

The Reconsideration Motion neither alleges nor demonstrates any good excuse for the total failure to appear at the May 20 hearing by *both* Mr. Wright *and* his attorney Mr. MacLean. If Mr. Wright and/or his attorney Mr. MacLean felt that Mr. Wright's health did not permit him to attend the May 20 hearing (and the Reconsideration Motion does not allege this, let alone demonstrate it,) and wanted Mr. Wright to be able to attend the hearing, rather than just his attorney attending, they could have sought an adjournment of the hearing, in advance. But they did not do so. Nor did Mr. Wright's alleged health problems preclude his attorney, Mr. MacLean, from appearing at the May 20 hearing.

In paragraph 6 of the Reconsideration Motion, attorney MacLean states:

I checked Judge Tucker's docket maintained on the Bankruptcy Court's web page to ascertain if a hearing date existed. I found no hearing date scheduled for this matter.

There are several problems with this allegation. First, it does not say *when* Mr. MacLean

checked the Court's website. Second, the Court's website did in fact timely show the May 20, 2009 hearing in this case, beginning on Friday, May 15, 2009. On Friday of each week, as a courtesy to parties and their attorneys, the Court posts its hearing calendar for the following Wednesday's motion docket on the Court's website, <http://www.mieb.uscourts.gov/>, under the "Quick Links" section, under "Court Docket." The Court followed this practice for the motion docket for Wednesday, May 20, 2009, by posting the hearing calendar for May 20, 2009 on the Court's website *on Friday, May 15, 2009*. That calendar included the hearings scheduled for 2:00 p.m. on May 20 in this case, including the further hearing on the Debtor's objection to Wright's claim and the Debtor's motion for summary judgment regarding that claim objection. And that calendar remained on the Court's website until the morning of Thursday, May 21, when it was automatically removed in preparation for the posting of the next week's motion hearing calendar. (A copy of the May 20 calendar that was posted to the Court's website is attached to this Order.) So rather than misleading Mr. Wright or Mr. MacLean in any way, the Court's website posting actually served as an *additional* notice to them of the May 20 hearing.

Paragraphs 7 and 8 of the Reconsideration Motion allege the following:

7. The court clerk was contacted after 4/21/ 2009 and was asked directly if a date had been set for a hearing on the Motion for Summary Judgment.
8. The court clerk advised that no date had been set, but that a separate order would be sent in the event a hearing date was scheduled.

This allegation is vague, in that it does not state who called "the court clerk" and when, and does not state who specifically such unidentified caller spoke to. No staff in the undersigned judge's chambers recalls such a conversation. And when Mr. MacLean called the undersigned judge's

courtroom deputy (Mary Vozniak) on May 21, 2009 (a day after he missed the May 20 hearing,) he stated that he had talked to "someone" in chambers regarding setting a hearing on **his** motion for summary judgment. But as Ms. Vozniak told Mr. MacLean, during that May 21 conversation, there is no record of Mr. Wright having filed a motion for summary judgment. (In fact, Mr. Wright never filed a motion for summary judgment on the Debtor's claim objection.)

For all of the reasons stated above,

IT IS ORDERED that the Reconsideration Motion is DENIED.

Signed on May 22, 2009

/s/ Thomas J. Tucker

Thomas J. Tucker

United States Bankruptcy Judge

**U.S. BANKRUPTCY COURT
FOR THE EASTERN DISTRICT OF MICHIGAN**

Honorable Thomas J. Tucker

Wednesday, May 20, 2009

Current as of 5/15/2009 at 2:04 PM

Detroit

Courtroom 1925, 211 W. Fort St. Bldg.

Courtroom 1925

211 West Fort Street Bldg.

Detroit, MI 48226

9:00 AM

08-05130 New Liberty Bank v. Piana

Matter: CONTROL DATE RE: Final Pretrial Conference

Comment Reset from 04/27/09 at 9:00 am

9:00 AM

Scott D. Kappler

08-05130 New Liberty Bank v. Piana

Matter: Motion for Default Judgment

9:00 AM

Andrea D. Cartwright

08-05130 New Liberty Bank v. Piana

Matter: Motion to Vacate/Set Aside (related documents [27] Order (Generic))

9:00 AM

Andrea D. Cartwright

08-05130 New Liberty Bank v. Piana

Matter: Motion to Dismiss Adversary Proceeding

9:00 AM 08-57219 Charles Edward Downer and
Ch 7 Amy Lynn Downer
Trustee: Ellmann

Douglas Ellmann

Matter: Objection to Claim Number 2 by Claimant CitiMortgage Inc..

9:00 AM 08-71679 David J Charters and
Ch 7 Frances F Charter
Trustee: Allard

Katherine Rose Catanese

Matter: Objection to Debtor's Claim of Exemptions

| | | | |
|----------------|---|---|------------------------|
| 9:00 AM | 09-40747 | James Allie Ch 7 Trustee: Nathan | Sandra S. Hamilton |
| Matter: | Motion to Extend Objection Deadline to File 727 Complaint and/or File Complaint Under 11 U.S.C. &#167; 523 Seeking Non-Dischargeability, | | |
| <hr/> | | | |
| 9:00 AM | 09-42599 | Robert Slack Ch 7 Trustee: Dakmak | Thomas Hensel Jr. |
| Matter: | Motion to Redeem Property of the Estate 2006 Pontiac G6 | | |
| <hr/> | | | |
| 9:00 AM | 09-43132 | Kelley Vernard Claxton and Ch 7 Camille Ann Claxton Trustee: Dakmak | |
| Matter: | Reaffirmation Agreement Between Debtor and CitiFinancial Auto Corporation Re:2008 DODGE AVENGER with Declaration of Attorney. | | |
| <hr/> | | | |
| 9:00 AM | 09-47324 | Gregory Washington Ch 7 Trustee: Ellmann | D. Lisa Evans |
| Matter: | FURTHER HEARING RE: Motion for Relief from Stay and Waiving the FRBP 4001 (a)(3) Re: 6709 Wing St, Ypsilanti, MI 48197-1061 | | |
| <hr/> | | | |
| 9:00 AM | 09-49428 | Pelican Metal Products, LLC Ch 7 Trustee: Taunt | Daniel P. Webber |
| Matter: | EXPEDITED HEARING RE: Motion to Sell Property industrial equipment, tools and machinery Free and Clear of Lien | | |
| <hr/> | | | |
| 9:00 AM | 09-50114 | Mohamed Bazzi Ch 7 Trustee: Lim | David H. Lewiston |
| Matter: | Motion to Excuse/Waive Attendance at 341-7 Meeting of Creditors and Other Future Hearings | | |
| Comment | IMPROPER NOTICE OF WITHDRAWAL FILED | | |
| <hr/> | | | |
| 9:00 AM | 09-50600 | James Edward Broadnax and Ch 7 Sharalece Lasharayll Broadnax Trustee: Kohut | |
| Matter: | Hearing on Order to Show Cause Why This Case Should Not Be Dismissed for Failure to Pay Filing Fees in Cases 09-45989, 09-44163 and 05-62944 | | |
| <hr/> | | | |
| 9:00 AM | 09-51108 | Cathy Irene Hale Ch 7 Trustee: Wells | Kellie C. Arman Schone |
| Matter: | Motion for Relief from Stay and Waiving the FRBP 4001 (a)(3) Re: 2007 Dodge Ram | | |
| <hr/> | | | |

9:00 AM 09-52220 Semetra Ann Wilson D. Lisa Evans
Ch 7
Trustee: Stevenson

Matter: **Motion for Relief from Stay and Waiving the FRBP 4001 (a)(3) Re: 323 Oak Ridge Dr, Pontiac, MI 48341-3612 and Trustee Abandonment**

9:00 AM 09-52377 Garnell McAfee and
Ch 7 Marilyn McAfee
Trustee: Lim

Matter: **Hearing on Order to Show Cause Why This Case Should Not Be Dismissed for Failure to Pay Filing Fees in Cases 06-48798 and 06-46860**

9:00 AM 09-53257 Toya Denise Aaron
Ch 7
Trustee: Taunt

Matter: **Hearing on Order to Show Cause Why This Case Should Not Be Dismissed for Failure to Pay Filing fee in Case 09-48935**

9:00 AM 09-53265 Shawn L. Jones
Ch 7
Trustee: Taunt

Matter: **Hearing on Order to Show Cause Why This Case Should Not Be Dismissed for Failure to Pay Filing Fee in Case 09-50904**

9:00 AM 09-53854 Tracey Lloyd Kriesch and
Ch 7 Karen Darelene Kriesch
Trustee: Nathan

Matter: **Hearing on Order to Show Cause why Debtor is Entitled to Discharge**

11:00 AM 07-48680 St. James Incorporated Sean M. Walsh
Ch 11

Matter: **Objection to Claim Number 79,150,181,182,202,234,277,281,284,291,295,303,310,313,329,330 by Claimant 1030 Doris Rd., LLC, Borg Indak, Inc., Chrysler, LLC, Continental Automotive Mexicana, S.A. de C.V., Delphi Automotive Systems, LLC, Demmer Properties, LLC, Dennis Kneale, Guardian Industries, JPS Automotive, Inc., Motor City Stamping, Inc., Parat Automotive, Pinnacle Molded Plastics Corp., Riverview Investments, Robert Bosch, LLC, TradeBeam, Inc..**

Comment **RESPONSE FILED BY 1030 DORIS ROAD (CL 277), DEMMMBERS PROPERTIES (CL 303), GUARDIAN INDUSTRIES (CL 181), PARAT AUTOMOTIVE (CL 310), CHRYLSER (79, 150, 181, 182, 202, 234, 277, 281, 281, 291, 295, 303, 310, 329 AND 330)**

11:00 AM 09-52889 Kay Bee Kay Properties, LLC
Ch 11

Matter: **Hearing on Order to Show Cause**

11:00 AM 09-52903 Keith Bradley Kramer
Ch 11

Matter: Order for Initial Ch. 11 Status Conference

11:00 AM 09-54303 David D. Ridley and
Ch 12 Deborah L. Ridley

Matter: Hearing on Order to Show Cause why Case should not be Dismissed
Comment Reset for 05/20/09 at 11:00 am

1:00 PM 08-57422 Antonio Attard
Ch 13
08-05064 Attard v. Wells Fargo Bank, N.A.

Matter: CONTROL DATE RE: FPTC/TRIAL
Comment Reset from 04/15/09 at 2:30 pm

1:00 PM 08-57422 Antonio Attard Mark E. Bredow
Ch 13
08-05064 Attard v. Wells Fargo Bank, N.A.

Matter: Motion for Summary Disposition and Brief in Support

2:00 PM 08-69445 Little Rock Baptist Charity Care Cente Meredith McKinzie
Ch 11

Matter: Objection to Claim Number 16 by Claimant Joseph M. Wright.
Comment RESPONSE FILED

2:00 PM 08-69445 Little Rock Baptist Charity Care Cente Meredith McKinzie
Ch 11

Matter: Objection to Claim Number 14 by Claimant State of Michigan, Department of Community Health.
Comment RESPONSE FILED

2:00 PM 08-69445 Little Rock Baptist Charity Care Cente Meredith McKinzie
Ch 11

Matter: Motion For Summary Judgment
